

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES SMITH

CIVIL ACTION

V.

CITY OF PHILADELPHIA, et al. :

NO.99-CV-5484

ORDER

AND NOW, this 1st day of May, 2001, upon consideration of the defendants' motion to stay trial of this matter and plaintiff's response thereto, it is hereby **ORDERED** and **DECREED** that the said Motion is **GRANTED** for the following reasons.

In their briefs, both parties argued that the court should consider the following four factors in deciding the motion to stay trial: (1) whether the moving party is likely to succeed on appeal; (2) whether the moving party will suffer irreparable harm if the stay is not granted; (3) whether other parties will be substantially harmed by the delay; and (4) whether the public interest will be served by granting the stay. The Court declines

to apply this test, because that test - usually applied in deciding whether to stay an order or an injunction - is not helpful in this context.

The Court instead grants the motion to stay trial based on the reasoning of the Seventh Circuit Court of Appeals in Monfils v. Taylor, 165 F.3d 511 (7th Cir. 1998). In Monfils, the Seventh Circuit stated: "because the jury trial proceeded while [the individual defendant's] appeal on the qualified immunity issue was pending, we are left with what turns out to be a thorny problem. We are dismayed that this case proceeded in a fashion which allowed this problem to arise." Id. at 518.

The Seventh Circuit stated that, although the individual defendant was not the subject of a jury question during the trial on municipal liability, his conduct was used to attempt to establish a substantive due process violation against the city. These proceedings therefore raised difficult questions of issue preclusion, as well as the possibility of inconsistent verdicts should a second trial take place. In addition, the Seventh Circuit raised issues of 'judicial economy ... and fairness," Id. at 520.

The Court has considered the fact that Third Circuit

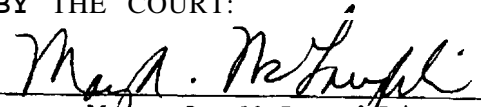
precedent on the issue of municipal liability differs from Seventh Circuit precedent, but finds that these differences do not render the Monfils analysis less persuasive. In Fasan v. City of Vineland, the Third Circuit held that claims against an individual defendant and claims against a municipality under section 1983 are "based on different theories and require proof of different actions and mental states." 22 F.3d 1283, 1292 (3d Cir. 1994) (Fagan I). The Third Circuit did not hold, however, that municipal liability is never conditioned on the liability of an individual employee. Rather, the Third Circuit held that "if we conditioned municipal liability on an individual police officer's liability in every case, it might lead to illogical results." This understanding of Fasan is consistent with Simmons v. City of Philadelphia, in which the Third Circuit described two types of municipal liability: direct and vicarious.' 947 F.2d 1042, 1063 n.18 (3d Cir. 1991).

In the instant case, the conduct of the paramedic defendants would be central to a trial on municipal liability, either as a means of showing causation in a direct municipal liability case or as a predicate for vicarious municipal liability. The Seventh Circuit's argument in Monfils is therefore persuasive despite the

¹ Vicarious liability in this context is not equivalent to respondeat superior, but does require as an initial matter an underlying constitutional violation on the part of an individual defendant.

possibility of independent municipal liability under Third Circuit case-law. The motion to stay trial in this matter pending appeal of the qualified immunity issue is granted.

BY THE COURT:


Mary A. McLaughlin, J